**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No. 1140 of 2001
(Old No.2642/1983)

Liyakat

Versus

State of Uttaranchal

Date of decision 27. 02. 2006

**~~A.F.R. (Approved for Reporting)~~**

Not approved for reporting

Date:- 27.02.2006 Initials of Judge

**Note:-** Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL**

**AT NAINITAL**

**Criminal Appeal No. 1140 of 2001**

(Old No. 2642 of 1983)

Liyakat S/o Sri Abdul Hameed
R/o Village and Police Station-Vikas Nagar
District-Dehradun ...Appellant

Versus

State of Uttaranchal ...Respondent

Sri Vijay Bhatt., learned counsel for the appellant
Sri A. Rab, Additional G.A. and Sri Sudhir Chaudhary, learned A.G.A. for the State

**Hon'ble J.C.S. Rawat, J.**

1. The present appeal has been directed against the judgment and order dated 31.10.1983 passed by Sri G.P. Srivastava, the then Additional Sessions Judge, Dehradun in S.T. No. 109/1981 convicting and sentencing the appellant to undergo R.I. for seven years and one year u/s 304 IPC and 324 IPC respectively. Both the sentences were to run concurrently.

2. Brief facts for the disposal of this appeal are that on 13.04.1981 at about 11:15 A.M. Ramesh Chand alongwith his friends Rakesh Kumar, Janak Raj Bhatia and Habbu were standing in queue to purchase the ticket for the picture of Pyara Dusman in Shashi Talkies, it was further alleged that accused-Liyakat came there and he tried to break the queue and wanted to stand before Ramesh Chand. Ramesh Chand raised the protest and requested him to purchase the ticket in the queue and not to break the queue. Thereafter accused-Liyakat became annoyed and he told him to see later on and went away from the spot. The complainant-Ramesh Chand purchased the ticket and he was standing alongwith his friends in the barandas of the cinema hall thereupon the appellant

alongwith other co-accused (which have been acquitted by the trial court) reached at the spot and the appellant Liyakat caught hold the collar of the complainant and threatened him of dire consequences. Thereupon the appellant took up the knife from his pocket and tried to assault the complainant. In the meantime, Janak Raj Bhatia-deceased caught hold of his hand and asked him not to assault Ramesh Chand. The appellant-Liyakat asked the deceased-Janak Raj Bhatia not to interfere in the matter and the deceased-Janak Raj Bhatia ignored him and continued to hold his hand. The appellant-Liyakat assaulted him with knife in his stomach, consequently, the deceased-Janak Raj Bhatia fell down. Thereafter, the appellant-Liyakat tried to assault the Ramesh Chand but he escaped himself with the help of his left hand. Consequently, his middle and index fingers were injured. Thereafter, the appellant again tried to assault the complainant-Ramesh Chand by knife but he immediately bow down himself and the said assault of the appellant was suffered by Shaukat who was standing just behind the complainant-Ramesh Chand. After stabbing Janak Rak Bhatia, Ramesh Chand and Shaukat, the appellant fled away from the place of incident. The condition of the deceased-Janak Raj Bhatia was serious and he was sent to the hospital by the car of Bhajan Lal and the accused-Shaukat was also taken to the hospital.

3. A written report was lodged at the p0lice station at about 12:05 p.m. on 13.04.1981. It is pertinent to mention here that another F.I.R. was lodged by Sri Mistry Abdul Hameed at about 12:30 p.m. on 13.04.1981 in which cross version was recorded.

4. After registering the case injuries of the complainant Ramesh Chand was examined by Dr. H.C. Purohit, the Medical Officer, Subhash Dispensary, Vikasnagar who found the following injuries on his person:-

*1. Abraised contusion 4 cm. x 4 cm. on middle of forehead. 4 cm. above eye brow. Fresh blood and wound. Colour of injury reddish.*

*2. Contusion 5 x 4 cm. on left check extending upto eye (left) colour of injury reddish.*

*3. Incised wound 3.5 cm. x 1 cm. x subait feet deep on left index and middle finger starting from left index finger to left middle finger. Fresh bleeding present on mopping the wound.*

Dr. H.C. Purohit also medically examined the accused Shaukat on 13.04.1981 at about 12:00 noon. He prepared the medical report Ex.Kha-3 and found the following injuries on the persons of the accused Shaukat:-

*1. Incised wound 4 cm. x 2.5 cm x muscle deep on posterior wall of axillia on left side horizontally and obliquely placid. Margins clear cut. Fresh bleeding from wound.*

*2. Incised wound 6 cm. x 3.5 cm. x muscle deep on posterior side fo the left upper arm ½ cm. away and downward to injury No. 1. Fresh bleeding present on mopping the wound. Margins are clear cut.*

As per the opinion of the Doctor, the above injuries are kept under observation and they had been caused by sharp cutting object and the duration of the injury was fresh.

Injuries of Janak Raj Bhatia was also examined in Herbertpur Christian Hospital. The Superintendent submitted his report (Ex.Ka-12). Janak Raj Bhatia succumbed to the injuries on 20.04.1981. The post-mortem was conducted by Dr. R.K. Gupta-PW5. He prepared the post-mortem report and found the following

anti mortem injuries on the body of the deceased Janak Raj Bhatia:-

*1. Incised wound 31 cm. x 3 cm. x cavity deep with stitches in the peritoneinum inner muscular wall. There are no stitches on the other skin on upper layers. Intestine seen coming out in the middle 1/3rd of the wound.*

*2. Incised wound 5 cm. x 3.5 cm. x cavity deep 2 cm. away from unbicious on highest side of abdomen. Stitches in the pentoneum inner inside wall seen. Outer muscle layers and skin do not have any stitches.*

*3. Abrasion in an ear of 3 cm. x 1 cm. on right end of upper abdomen.*

*4. Abrasion 0.5 cm. x 0.2 cm. on right side abdomen 6 cm. below injury no. 3.*

*5. Abrasion 2 cm. x 1 cm. on right side of abdomen 6 cm. below injury no. 4.*

Dr. R.K.Gupta-P.W.5 also opined that the death took place due to the above injuries.

5. The Investigating Officer recorded the statement of the deceased u/s 161 Cr.P.C. The Investigating Officer had stated that he want to the hospital on 14.04.1981 and he found the deceased Janak Raj Bhatia was not in a condition to give statement u /s 161 Cr.P.C., hence he did not record the statement on that day. Thereafter, he recorded his statement on the next date, i.e., on 15.04.1981. After completion of the investigation, chargesheet was submitted by the Investigating Officer. The accused-appellant was charged u/s 304 I.P.C. and 324 I.P.C. and he denied the charges levelled against him and claimed trial.

6. The-co-accused, Shaukat, Furkan and Israr alias Pappu were also charged by the learned trial court but they were acquitted by the impugned judgment.

7. The prosecution in support of this case examined Dr. H.C. Purohit –PW1 has examined complainant-Ramesh Chand, Bhasakar Singh, Head Constable-PW2 has recorded the F.I.R., Rakesh Kumar-PW3 is eyewitness of the incident, Ramesh Chand-PW4 is the informant and complainant of the case. He is also injured and he has also narrated the entire story. Dr. P.K. Gupta-PW5 has conducted the post-mortem of the deceased-Janak Raj Bhatia, Mahendra Kumar-PW6 is the eyewitness of the incident, S.I. Kishen Singh Yadav-PW7 has investigated the matter and submitted the chargesheet after making the necessary formalities of the investigation. Kuriakosa-PW8, has given the secondary evidence to the effect that the Doctor who had examined Janak Raj Bhatia in Hospital has left from the hospital and Kuriakosa-PW8 proved the medical certificated prepared by the then Doctor and he proved the signature and writing of that doctor.

8. Thereafter the appellant was examined u/s 313 Cr.P.C. and he has stated that he has been falsely implicated in this case. The appellant stated that the complainant-Ramesh Chand took up the quarrel and he stabbed Shaukat and Janak Raj Bhatia. The appellant also stated that in collusion with the police, the complainant has manipulated a false case against him. He further alleged that the F.I.R. was lodged u/s 324 I.P.C. against the complainant Ramesh Chand and others for stabbing the co-accused Shaukat.

9. The appellant had adduced the evidence in his defence. The defence produced Shaukat-DW1, who has narrated the incident as has been alleged in his F.I.R. lodged against the

complainant party in which the case u/s 324 I.P.C. was pending before the trial court. He had stated that he came from his house to take medicine for his wife. He also went to the picture hall to purchase the ticket of the picture show. When he was standing on the queue the complainant Ramesh Chand alongwith others tried to break the queue at which Liyakat prevented them and consequent thereupon there was a marpeet in between the parties. He and Janak Raj Bhatia tried to mediate and prevented them from fighting. At that time, Ramesh Chand picked out knife from his shoe and tried to assault Liyakat. Liyakat was escaped and the knife injured the stomach of Janak Raj Bhatia. When he was escorting Janak Raj Bhatia from that place, the complainant again assaulted Shaukat by knife and he sustained the injuries. Shehzad Mohd. Khan-DW2 is also witness who has taken the photographs. Dr. R.K. Purohit-DW3 is Deputy C.M.O. who has given his opinion after perusal of the medical certificate of Shaukat that the injuries of Shaukat was not possible if it was caused from the front side. This injury could be caused only if it is caused from the back side and he had neither examined Shaukat nor he had examined the complainant. He had given his opinion on the basis of the perusal of injury report Ex. Kha-3 and the scare on the body of the accused after a lapse of three years. He had contradicted the statement of Dr. H.C. Purohit-PW1 and opined that this injury cannot come even if the knife is inserted beneath the hand

10. After appreciation of the evidence, the learned Sessions Jude convicted and sentenced the appellant as indicated above and other co-accused were acquitted of the charges levelled against them.

11. I have heard learned counsel for the parties and perused the record.

12. At the outset, I would like to mention that it is admitted to both the parties that scuffle took place in the Shashi Talkies. Time of the incident and place of incident is also admitted to both the parties. Presence of the appellant as well as the complainant and the deceased is also admitted to both the parties. It is only disputed that whether the injuries were caused by the accused-appellant or it was caused by Ramesh Chand to the Shaukat and Janak Raj. According to the F.I.R. version of the prosecution, the incident took place as has been indicated in para 2 of my judgment. According to the defence version, the incident took place as has been narrated by the Shaukat-DW1. Both the parties have sustained the injuries and Doctor H.C. Purohit-PW1 had examined the injuries of both the sides and the medical certificate has been placed on record by the parties.

13. Now I have to only determine as to who is responsible for causing the injuries upon the person of the deceased-Janak Raj Bhatia and Ramesh Chand. The prosecution in support of his case had produced the evidence of Ramesh Chand PW4 who was the informant and injured in this case. He has narrated the incident as indicated in para 2 of my judgment. Rakesh Kumar-PW3 had corroborated Ramesh Chand-PW4. There are three eyewitnesses of the incident viz. Ramesh Chand- PW4 injured, PW6-Mahendra Kumar and PW3-Rakesh Kumar. Rakesh Kumar PW3 had stated at that time of the occurrence Ramesh Chand- PW4 was in the queue to purchase the ticket for the picture of Pyara Dusman in Shashi Talkies. It was further alleged that accused-Liyakat came there and the tried to break the queue and wanted to stand before Ramesh Chand. Ramesh Chand raised the protest and requested him to

purchase the ticket in the queue and did not break the queue. Thereafter accused-Liyakat became annoyed and he told him to see him later on and went away from the spot. The complainant-Ramesh Chand purchased the ticket and he was standing alongwith his friends in the barandas of the cinema hall thereupon the appellant alongwith other co-accused (which have been acquitted by the trial court) reached at the spot and the appellant Liyakat caught hold the collar of the complainant and threatened him to dire consequences. Thereupon the appellant took up knife from his pocket and tried to assault the complainant. In the meantime, Janak Raj Bhatia-deceased caught hold of his hand and asked him not to assault him. The appellant-Liyakat asked the deceased-Janak Raj Bhatia not to interfere in the matter and the deceased-Janak Raj Bhatia did not consider his request and continue to hold his hand. The appellant-Liyakat assaulted him with knife in his stomach consequently, the deceased-Janak Raj Bhatia fell down. Thereafter, the appellant-Liyakat tried to assault the Ramesh Chand but he escaped himself with the help of his left hand. Consequently, his middle and index fingers were injured. Thereafter, the appellant again tried to assault the complainant-Ramesh Chand by knife but he immediately bowed down himself and the said assault of the appellant was suffered by Shaukat who was standing just behind the complainant-Ramesh Chand. After stabbing Janak Raj Bhatia, Ramesh Chand and Shaukat, the appellant fled away from the place of incident. Mahendra Kumar-PW6 had also seen the occurrence and had corroborated the evidence of Ramesh Chand-PW4 and Rakesh Kumar-PW3.

14. Learned counsel for the defence contended that it is in the evidence that the incident took place in day light and there were around 100-150 persons standing at the time of the incident. It was further contended that the prosecution

witnesses had admitted that the cinema officials who were working in the cinema hall were also present at the time of the incident. It was further contended that the prosecution had only adduced the evidence of the complainant and one Rakesh Kumar-PW3 and Mahendra Kumar-PW6 who were interested witnesses and their testimony cannot be relied upon without the corroboration from the independent witnesses. The learned counsel for the defence further contended that none of them was examined by the prosecution and non-examination of these witnesses creates a doubt in the story of the prosecution. It is natural that when the incident took place, there were so many peoples who had seen the occurrence. It is not always necessary to multiply the evidence of incident on the same point. It has to be seen what is the quality of the witnesses. It is the quality of the evidence and not the quantity which is required. If the evidence available on record is otherwise credible and cogent in nature and can be said to be the trustworthy and increase in the number of witnesses cannot be turned up as the requirement of the case. The witnesses if they are participating in that event their evidence cannot be thrown out purely on the ground that they were interested witnesses. While examining the witnesses the courts have to more carefully examine the evidence of interested witnesses. If the witnesses are trustworthy then it is not required that there should be a multiplicity of evidence. It is common experience that in the recent times there has been a sharp decline of ethical values in public life even in developed countries much less a developing one, like ours, where the ratio of decline is higher. Even in ordinary cases the witnesses are not inclined to depose. One of the reason may be that they do not have the courage to depose against an accused because of threat to their life, more so when the offenders are habitual criminals or high-ups such instances are also not uncommon where a witness is not inclined to depose because in the prevailing

social structure he wants to remain indifferent. Thus the public prosecutor in an ordinary case had to face with so many odds. The courts while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach in the matters. In the instant case, Rakesh Kumar-PW3 and Ramesh Chand-PW4 and Mahendra Kumar-PW6 had been examined. I am fortified with the view taken by the Apex Court in the following two decisions:

15. It has been held in **Komal and others Vs. State of U.P. 2002 SCC (Cri) 1600** as under:-

*"Learned counsel next contended that though, according to the statements of witnesses, some villagers had arrived at the place of occurrence when the members of the prosecution party were begin assaulted and they intervened in the matter, none of them has been examined in the case on hand. In our view, non-examination of these witnesses by itself would not affect the veracity of the prosecution case when the evidence of PWs 2 and 4, the two injured eye witnesses who had received multiple injuries, has been found to be trustworthy and their evidence is corroborate by the informant PW 5 and supported by medical evidence as well as objective finding to the Investigating Officer."*

16. It has been further held in **Babu Ram vs. State of U.P.; 2002 SCC (Cri) 1400** as under:-

*"It was submitted by the learned counsel for the appellants that Ram Autar, an independent eye witness present at the scene of the occurrence according to the prosecution case and a government servant has not been examined, and therefore, an adverse inference should be drawn against the prosecution. It is settled law that non-examination of any eye-witness cannot be pressed into service like a ritualistic formula for discarding the prosecution case with a stroke of the pen. An*

*effort should be made at appreciating the worth of such evidence as has been adduced. If the evidence coming from the mouth of the eye witnesses examined in the case is found to be trustworthy and worth being relied on so as to form a safe basis for recording a finding of guilt of the accused persons then non-examination of yet another witness who would have merely repeated the same story as has already been narrated by other reliable witnesses would not cause any dent or infirmity in the prosecution case. In the case at hand we additionally find from the testimony of Ashrafi Lal that in spite of being a government servant and not involved in local village disputes he is afraid of deposing against the accused persons and there is substance in the submission of the learned counsel for the State that Ram Autar if tendered in the witnesses box would have followed the same track as was chosen by Asharfi Lal P.W. 3."*

17. The learned counsel for the appellant further contended that there are certain discrepancies in the evidence of the prosecution. It was pointed out that according to the prosecution witnesses the appellant came there and he broke the queue and he tried to stand before the complainant when the complainant objected, the appellant left the place of occurrence and he threatened the complainant by saying that he would see him later on. He had not narrated that any scuffle took places whereas the other witnesses stated that some scuffle took place. Learned counsel for the defence contended that this is the major discrepancy in the statement of the witnesses. It was also pointed that there is a contradiction as regards how the incident took place & how the complainant was grounded & how the injuries were caused. I have seen the entire evidence of both the witnesses and the discrepancies pointed out by the learned counsel for the appellant. Learned A.G.A. refuted the contention and stated

that such discrepancies are bound to come in the truthful testimony of the witnesses. I have gone through the entire evidence on record. The observations of the witnesses differ from person to person and what one may notice, another may not. An object or moment might emboss its image on one person's mind whereas it might go unnoticed on the part of another. By and large the people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder. The witness cannot be expected to pose a photographic memory and to recall the details of an incident. Learned counsel for the petitioner further contended that there is discrepancy between the medical evidence and the ocular testimony. Ordinarily if so happens that witness is overtaken by the events, the witness could not have anticipated the occurrence, which he is taken by surprise. Ordinarily a witness cannot be expected to recall accurately the sequences of events, which took place in a rapid succession or in a short time of span. A witness is likely to get confused or mixed up when interrogated later on. As the person who has witnessed an incident, like the present one reacts in his own way. The witnesses while scuffle has been going on would try to save him at the time and he would not be able to accurately see where the injuries are coming and he would only consider to save himself in such a situation. If the contradiction did not affect the prosecution story, the courts should not take into account such discrepancies which are bound to come on the truthful testimony. The incident took place in the year 1981 and the evidence was recorded after a lapse of three year. The description as pointed out by the learned counsel for the appellant are not such consequences which can be named the boulders of the prosecution. The discrepancies are natural. There are bound to be some discrepancy between the

narration of the different witnesses when they speak in details. Unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. The discrepancies pointed out by the counsel for the appellant are not fatal to the prosecution.

18. Learned counsel for the defence further contended that there is no recovery of the weapon and he further contended that the soil of the spot was taken by the Investigating Officer but it was not sent to the chemical examiner. It was further contended that the cloth which was taken into custody were not sent to the chemical examination. Learned counsel for the defence further contended that the appellant is entitled to be acquitted on this score. Learned A.G.A. refuted the contention and contended that the defects found in the investigation cannot be a sole ground for the acquittal of the accused. It is well settled position of law that the testimony of the witnesses if found credible and cogent the defect on the part of the Investigating Officer cannot be taken into account. (See **Dhanaj Singh @ Shera and others Vs. State of Punjab 2004 (3) SCC P-654).** Learned counsel for the defence contended that the ruling mentioned above is not applicable in this case because in that case the ocular testimony as well as the medical evidence was corroborated the incident as such the conviction was maintained in the instant case as indicated above. In the case in hand the ocular testimony is reliable as such the lapses on the part of the Investigating Officer cannot be taken into account. Even if the investigation is defective, that pales into insignificance when ocular testimony is found

credible and cogent. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect. To do so would tantamount to playing into the hands of the investigating officer if the investigation designedly defective. The other aspect of this matter is that the incident is totally admitted to the parties. It is only disputed who was the author of the injuries on the persons of the injured and deceased. The presence of the parties is admitted and the place of the incident is also admitted. The only things is to be decided who is the aggressor whether the accused or the appellant in this case. In the light of the above, the absence of the report of chemical examiner becomes insignificant.

19. Learned counsel for the defence further contended that the prosecution evidence reveals that Bhajan Lal the Taxi Driver took the decease from the place of incident to the hospital and he was not examined by the prosecution. He would have been the best witness to tell who caused the injuries to whom. I do not find any force in the contention advanced by the learned counsel for the appellant. It is an admitted case of both the parties that the incident took place and Janak Raj Bhatia sustained the injuries. It is disputed as to whether the injuries on Janak Raj Bhatia was caused by the appellant or by the complainant. Thus non-production of Bhajan Lal, Car Driver is of no consequence. The evidence of Bhajan Lal is immaterial in this case.

20. It was further contended that the conduct of Ramesh Chand-PW4 was not natural. It was pointed out that it is in the evidence of the complainant that Janak Raj Bhatia was his friend and he sustained the serious injuries but he instead of sending him to the hospital, he went to the police station instead of giving Janak Raj Bhatia to help. Learned A.G.A.

refuted the contention. I do not find any substance in this contention. A person who had seen the incident like the present one reacts in his own way. Some are stunned and some become speechless and stand uprooted from the spot. Thus every individual reacts on his own way. There is no set rules of natural reaction. If Ramesh Chand-PW4 went to the police station immediately to lodge the report, it cannot be said that he reached unnaturally.

21. There are counter versions of the occurrence. The one version which has been stated in preceding paragraph of my judgment is the version given by the prosecution and the other version has been given by the defence which has been narrated in preceding paragraph 9 of my judgment. According to the defence version the injuries on the person of accused-Shaukat were also caused by Ramesh Chand-PW4. He had further stated that scuffle took place at the spot and Janak Raj Bhatia tried to mediate and prevented them from fighting. At that time, Ramesh Chand-PW4 took out knife from his possession and tried to assault Liyakat. However, Liyakat was escaped and the knife injured the stomach of Janak Raj Bhatia. The defence has also taken a case that Shaukat-DW1 is escorting the deceased Janak Raj Bhatia. Ramesh Chand-PW4 stabbed him with knife from his back which hit him. The defence also produced injury report Ex.Kha-3. The injured Shaukat sustained the injuries as has been indicated in the preceding para of my judgment. These injuries have been proved by Dr. H.C. Purohit-PW1 in his cross examination. It is admitted to both the parties that Janak Raj Bhatia-deceased was present at the spot and he tried to prevent the assault on the person of the injured. Now it is only the question who had caused the injuries to Janak Raj Bhatia. He sustained the fatal injuries. The defence is silent regarding the injuries of Ramesh Chand-PW4 sustained during the incident. However, the

prosecution has categorically stated that Ramesh Chand-PW4 sustained the injuries caused by Liyakat during the incident. Dr. H.C. Purohit-PW1 Medical Officer Subash Dispensary Vikasnagar has categorically stated that there are three injuries on the person of Ramesh Chand-PW4 and he had proved the injury report Ex.Ka-1 The appellant had also filed the photographs and negatives of the injuries of Shaukat-DW1. These documents had been proved by Shazad Mohd. Khan-DW2. Perusal of these documents did not indicate that it supports the defence theory. Dr. H.C. Purohit-PW1 has opined that the injuries found on the person of Ramesh Chand-PW4 were simplie. Injury No. 1 and 2 were caused by some blunt object and he had further opined that the injury No. 3 was caused by a sharp edged weapon. Duration of the injuries were found to be fresh. The evidence of Dr. H.C. Purohit-PW1 corroborates the evidence of the prosecution. He had also examined the accused Shaukat-DW1. He found two incised wounds on the person of the accused Shaukat. These injuries were kept under observation. He has further opined that these injuries could be caused by a sharp edged weapon. He had further opined that both the incised wounds could be sustained by the injured by a single storke of sharp edged weapon. Dr. H.C. Purohit-PW1 further opined that the injuries could come if the knife had been inserted beneath the hand from the front. However, the defence produced another doctor, namely Dr. R.K. Purohit, Dy. C.M.O., Doon Hospital who was examined before the trial court as DW3. He had contradicted the statement of Dr. H.C. Purohit-PW1 and stated that the injuries sustained by Ramesh Chand-PW4 could not be possible if the knife had been inserted beneath the hand. His evidence cannot be relied upon as he had given opinion without seeing the wound on the person of Ramesh Chand-PW4 immediately after the incident. He is not a medico legal expert. He had given his opinion after the perusal of the injury report Ex.Kha-3

and scare found in the body of the accused at the time of the giving the evidence before the court. He had stated that the injury could not come from front side. It is also pertinent to mention that he had not seen the wound of the injured immediately after the incident and he had not seen the tapering of the wound or he had not examined the injured immediately after the incident as such, the opinion on the basis of the report and scare available on the person of the injured cannot be relied upon as a reliable opinion. Thus I am not convinced by the evidence of Dr. R.K. Purohit-DW3. Dr. H.C. Purohit-PW1 had categorically stated in support of the prosecution and his evidence is completely reliable. Dr. H.C. Purohit-PW1 had further corroborated the story of the prosecution by giving evidence that Ramesh Chand-PW4 had sustained two injuries on the forehead which may come if a man falls on the ground. It is also in the evidence that Ramesh Chand-PW4 fell down on the ground and the appellant-Liyakat tried to stab him consequently the knife was inserted in the body of the accused-Shaukat. He had also sustained one incised wound on the left index finger. The entire medical evidence supports the prosecution version. It was further pointed out that the cross case registered by the father of Shaukat against the complainant party had been terminated into acquittal of the complaint party. It is admitted to the parties that the complainant party had been acquitted by the trial court. It was not bought to my notice that any appeal is pending against that judgment. If the trial of that cross case had ended in acquittal that also leads to take inference that the story of the accused Shaukat had been disbelieved by the competent court. I am of the view that the version put forward by the accused Shaukat is not credible and cogent. I am completely in agreement with the findings recorded by the learned Sessions Judge in this regard.

22. The Investigating Officer recorded the statement of the deceased u/s 161 Cr.P.C. on 15.04.1981. The Investigating Officer had stated in his evidence that he went to the hospital on 14.05.1981 and found Janak Raj Bhatia was not in a condition to give the statement u/s 161 Cr.P.C. Hence his statement was recorded on the next date. The learned trial court after recording the reason for disbelieving the statement. The trial court has recorded the reason for not believing the statement recorded u/s 161.Cr.P.C. The said evidence has not been challenged by the State. I am completely in agreement with the findings recorded by the trial court in dying declaration. The dying declaration cannot be taken into consideration for the conviction of the appellant. The evidence of the prosecution found corroboration from the F.I.R. which was lodged by Ramesh Chand-PW4 on 13.04.1981 at about 12:05 pm at Police Station Vikas Nagar with due promptness. The incident took place on 13.04.1981 at about 11:50 am. The distance between the place of occurrence and the Police Station is about 1-1/2 folong. The F.I.R. came into existence with promptness which ruled out any occasion for outside consultation and manipulation. The counter version was also lodged on the same day at about 12:30 pm. By Mistry Abudul Hamid, father of the accused Shaukat. This further corroborates the time and place of occurrence and the presence of the parties at the spot.

23. In view of the above discussion, I am of the view that the prosecution has established the guilt beyond any reasonable doubt against the appellant. I find that the learned trial court has rightly convicted and sentenced the appellant and there is no infirmity in the judgment passed by the trial court. Hence, the appeal is dismissed. The conviction is maintained and the sentenced awarded by the trial court against the appellant is confirmed.

24. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within one months from the date of receipt of order.

**(J.C.S. RAWAT, J.)**

27th February, 2006
Shiv